

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 444

Short Title: PFAS Mitigation Measures Cost Reimbursement. (Public)

Sponsors: Representatives Butler, Harrison, Richardson, and Autry (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

March 30, 2021

A BILL TO BE ENTITLED

1 AN ACT TO HOLD PERSONS THAT HAVE DISCHARGED OR RELEASED
2 POLY-FLUOROALKYL SUBSTANCES (PFAS) RESULTING IN CONTAMINATION
3 OF SURFACE WATER OR GROUNDWATER USED FOR A PRIVATE OR PUBLIC
4 DRINKING WATER SUPPLY, WHICH ENDANGERS THE HEALTH AND SAFETY OF
5 PERSONS OBTAINING DRINKING WATER FROM THAT WATER SUPPLY,
6 RESPONSIBLE FOR COSTS NECESSARY TO ADDRESS THE CONTAMINATION IN
7 ORDER TO ENSURE SAFE DRINKING WATER SUPPLIES FOR AFFECTED
8 PERSONS.
9

10 Whereas, per-fluoroalkyl, poly-fluoroalkyl substances (PFAS), and other
11 perfluorochemicals are a large group of human-made chemicals not found naturally in the
12 environment; and

13 Whereas, the PFAS group includes chemicals such as perfluorooctanoic acid (PFOA),
14 perfluorooctanesulfonic acid (PFOS), GenX, and others; and

15 Whereas, PFAS have been used in industry and consumer products worldwide since
16 the 1940s, including use in food packaging, stain- and water-repellent fabrics, nonstick products
17 such as Teflon, and firefighting foams; and

18 Whereas, PFAS may enter the environment from numerous industrial or commercial
19 sources, including when emitted during a manufacturing process, from the disposal of goods
20 containing PFAS, or as leachate from landfills; and

21 Whereas, these chemicals can travel long distances, move through the soil, seep into
22 groundwater, or be carried through the air; and

23 Whereas, many PFAS do not readily break down and persist in the environment for a
24 very long time, especially in water, and, consequently, PFAS can be found in many bodies of
25 water and in the blood of humans and wildlife; and

26 Whereas, PFAS have been linked to cancers and other health issues, and according to
27 the United States Environmental Protection Agency (USEPA), studies indicate that PFOA and
28 PFOS can cause reproductive and developmental, liver and kidney, and negative immunological
29 effects in laboratory animals; and

30 Whereas, in 2016, USEPA issued a nonregulatory lifetime health advisory of 70 parts
31 per trillion (ppt) for individual and combined PFOA and PFOS in drinking water; and

32 Whereas, in 2019, USEPA issued a formal PFAS Action Plan outlining the long- and
33 short-term actions that USEPA plans to take surrounding PFAS which includes developing an
34 MCL for states and local water utilities under the federal Safe Drinking Water Act and listing



1 PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response,
2 Compensation, and Liability Act (CERCLA, also known as Superfund); and

3 Whereas, in 2018, the General Assembly enacted legislation to require persons
4 responsible for the discharge of PFAS that result in contamination of a private drinking water
5 well to establish a permanent replacement water supply for affected parties, with contamination
6 defined as (i) an exceedance of a standard established by the Environmental Management
7 Commission for groundwater, surface water, or air quality, or (ii) an exceedance of a health
8 advisory level established by the United States Environmental Protection Agency, for any
9 chemical classified as a PFAS, including GenX; and

10 Whereas, Subchapter 2L of Chapter 15A of the North Carolina Administrative Code
11 provides that for substances which are not naturally occurring and for which no standard is
12 specified, the substance shall not be permitted in groundwater at concentrations at or above the
13 practical quantitation limit (PQL), defined as the lowest concentration that can be reliably
14 achieved among laboratories within specified limits of precision and accuracy by a given
15 analytical method during routine laboratory analysis; and

16 Whereas, the current PQL for GenX is 10 parts per trillion (ppt); and

17 Whereas, as the General Assembly has already enacted legislation to require a PFAS
18 discharger to pay for remedies for polluted drinking water wells where there is an exceedance of
19 a standard established by the Environmental Management Commission for groundwater, and the
20 State's groundwater rules provide that for substances which are not naturally occurring and for
21 which no standard is specified, the substance shall not be permitted in groundwater at
22 concentrations at or above the PQL, and the PQL for GenX is 10 ppt, it is therefore logical and
23 appropriate to apply this limit to groundwater or surface water that is a source of drinking water
24 from public water supplies, as well as private drinking wells; and

25 Whereas, in February 2019, the Department of Environmental Quality executed a
26 court-approved consent order with a PFAS discharger which, among other things, required the
27 PFAS discharger to provide reverse osmosis drinking water systems for any party with a
28 contaminated well with concentrations of certain PFAS above 10 ppt or combined concentrations
29 of certain PFAS above 70 ppt, and for public buildings such as schools or government buildings,
30 required that reverse osmosis systems must be provided at each drinking fountain and sink or
31 through another equally effective system approved by the Department; and

32 Whereas, current technologies to remove PFAS from finished drinking water could
33 cost water utilities tens of millions of dollars, and absent statutory relief, these costs would
34 ultimately be passed along to ratepayers and result in substantial increases to water rates; and

35 Whereas, costs to remove PFAS from finished drinking water should properly be
36 borne by persons found to be responsible for the discharge or release of PFAS that contaminates
37 a water source for a public water supply; Now, therefore,

38 The General Assembly of North Carolina enacts:

39 **SECTION 1.** G.S. 143-215.2A reads as rewritten:

40 **"§ 143-215.2A. Relief for contaminated ~~private drinking water wells~~supplies.**

41 (a) The Secretary ~~shall, upon direction of the Governor, shall~~ order any person who the
42 Secretary finds responsible for the discharge or release of industrial waste that includes per- and
43 poly-fluoroalkyl substances (PFAS), including the chemical known as "GenX" (CAS registry
44 number 62037-80-3 or 13252-13-6), into the air, groundwater, surface water, or onto the land
45 that results in contamination of a private drinking water well, as that term is defined in
46 G.S. 87-85, to establish permanent replacement water supplies for affected parties. ~~For purposes~~
47 ~~of this section, the terms (i) "contamination" means an exceedance of a standard established by~~
48 ~~the Environmental Management Commission for groundwater, surface water, or air quality, or~~
49 ~~an exceedance of a health advisory level established by the United States Environmental~~
50 ~~Protection Agency, for any chemical classified as a PFAS, including GenX; and (ii) "affected~~
51 ~~party" means a household, business, school, or public building with a well contaminated with~~

1 PFAS, including GenX, as a result of the discharge or release of industrial waste. Orders issued
2 pursuant to this subsection shall be subject to all of the following conditions:

3 ~~(b)~~(1) If the Secretary orders a person responsible for the discharge or release of a
4 PFAS, including GenX, that results in contamination of a private drinking
5 water well to establish a permanent replacement water supply for an affected
6 party with such a well pursuant to ~~subsection (a) of this section, this~~
7 subsection, preference shall be given to permanent replacement water supplies
8 by connection to public water supplies; provided that (i) an affected party may
9 elect to receive a filtration system in lieu of a connection to public water
10 supplies and (ii) if the Department determines that connection to a public
11 water supply to a particular affected party would not be cost-effective, the
12 Department shall authorize provision of a permanent replacement water
13 supply to that affected party through installation of a filtration system. For
14 affected parties for which filtration systems are installed, the person
15 responsible shall be liable for any periodic required maintenance of the
16 filtration system. An order issued by the Secretary pursuant to this subsection
17 ~~(a) of this section~~ shall include a deadline by which the responsible person
18 must establish the permanent replacement water supply for the affected party
19 or parties subject to the order.

20 ~~(e)~~(2) An order issued by the Secretary pursuant to this subsection ~~(a) of this section~~
21 shall be delivered by registered or certified mail, or by any means authorized
22 by G.S. 1A-1, Rule 4, to the person ordered to establish the permanent
23 replacement water supply and shall include detailed findings of fact and
24 conclusions in support of the order. A person to whom such order is issued
25 may commence a contested case by filing a petition under G.S. 150B-23
26 within 30 days after receipt of notice of the order. If the person does not file a
27 petition within the required time, the Secretary's decision is final and is not
28 subject to review.

29 ~~(d)~~(3) ~~A person~~ All persons required to establish a permanent replacement water
30 supply pursuant to this ~~section-subsection~~ shall be jointly and severally liable
31 for all necessary costs associated with establishment of the permanent
32 replacement water supply. The remedy under this ~~section-subsection~~ is in
33 addition to those provided by existing statutory and common law. Nothing in
34 this ~~section-subsection~~ shall limit or diminish any rights of contribution for
35 costs incurred herein.

36 ~~(e)~~(4) Nothing in this ~~section-subsection~~ shall be construed to (i) require an eligible
37 affected party to connect to a public water supply or receive a filtration system
38 or (ii) obviate the need for other federal, State, and local permits and
39 approvals.

40 ~~(f)~~(5) All State entities and local governments shall expedite any permits and
41 approvals that may be required for the establishment of permanent
42 replacement water supplies required pursuant to this ~~section-subsection~~.

43 (b) The Secretary shall order any person who the Secretary finds responsible for the
44 discharge or release of industrial waste that includes per- and poly-fluoroalkyl substances
45 (PFAS), including the chemical known as "GenX" (CAS registry number 62037-80-3 or
46 13252-13-6), into the air, groundwater, surface water, or onto the land that results in
47 contamination of a water source supplying a public water system to pay any actual and necessary
48 costs incurred by a public water system to remove, correct, or abate any adverse effects upon the
49 water supply resulting from the contamination for which the person is responsible. Such costs
50 shall include costs to procure, implement, maintain, and operate technology to reduce PFAS
51 concentrations in finished drinking water to the maximum extent that is technically feasible given

1 currently available technologies in order to prevent danger to the public from consuming
 2 contaminated drinking water. Orders issued pursuant to this subsection shall be subject to all of
 3 the following conditions:

4 (1) An order issued by the Secretary pursuant to this subsection shall be delivered
 5 by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule
 6 4, to the person ordered to pay costs incurred by a public water system to
 7 remove, correct, or abate any adverse effects upon the water supply resulting
 8 from the contamination for which the person is responsible and shall include
 9 detailed findings of fact and conclusions in support of the order. A person to
 10 whom such order is issued may commence a contested case by filing a petition
 11 under G.S. 150B-23 within 30 days after receipt of notice of the order. If the
 12 person does not file a petition within the required time, the Secretary's decision
 13 is final and is not subject to review.

14 (2) A person required to pay costs incurred by a public water system to remove,
 15 correct, or abate any adverse effects upon the water supply resulting from the
 16 contamination for which the person is responsible pursuant to this subsection
 17 shall be jointly and severally liable for all actual and necessary costs. The
 18 remedy under this subsection is in addition to those provided by existing
 19 statutory and common law. Nothing in this subsection shall limit or diminish
 20 any rights of contribution for costs incurred herein.

21 (c) A public water system shall reimburse ratepayers of the system through a reduction
 22 in future rates charged if (i) the public water system has previously expended funds to remove,
 23 correct, or abate any adverse effects upon its water supply resulting from PFAS contamination
 24 from a person the Secretary finds responsible for the discharge or release of the PFAS under an
 25 order issued pursuant to subsection (b) of this section; (ii) the amount of funds expended by the
 26 public water system for that purpose has been included in rates charged to its ratepayers; and (iii)
 27 the funds expended by the public water system are subsequently reimbursed by the person
 28 responsible for the contamination as the result of an order issued pursuant to subsection (b) of
 29 this section.

30 (d) Liabilities for discharges of PFAS to waters of the State established under this section
 31 shall not apply to discharges from a publicly owned treatment works occurring as a result of pass
 32 through from the indirect discharge of PFAS by an industrial user. The terms "indirect discharge,"
 33 "industrial user," "pass through," and "publicly owned treatment works" have the same meaning
 34 as in 40 C.F.R. § 403.3.

35 (e) For purposes of this section, the following terms shall apply:

36 (1) "Affected party" means a household, business, school, or public building with
 37 a well contaminated with PFAS, including GenX, as a result of the discharge
 38 or release of industrial waste.

39 (2) "Contamination" means quantifiable concentrations of an individual PFAS
 40 compound in exceedance of 10 parts per trillion (ppt) or combined
 41 quantifiable concentrations of any PFAS compounds in exceedance of 70 ppt,
 42 as measured by a laboratory method certified by the United States
 43 Environmental Protection Agency or approved by the Department, in water
 44 which is delivered to any user of a public water system.

45 (3) "PFAS" means compounds including, but not limited to, all of the following:

<u>Common Name</u>	<u>Chemical Name</u>	<u>CASN</u>	<u>Chemical Formula</u>
<u>PFMOAA</u>	<u>Perfluoro- 2-methoxyacetic acid</u>	<u>674-13-5</u>	<u>C3HF5O3</u>
<u>PMPA</u>	<u>Perfluoro-2- methoxypropanoic acid</u>	<u>13140-29-9</u>	<u>C4HF7O3</u>
<u>PFMOPrA</u>	<u>Perfluoro-3- methoxypropanoic acid</u>	<u>377-73-1</u>	<u>C4HF7O3</u>
<u>PFO2HXA</u>	<u>Perfluoro(3,5-dioxahexanoic) acid</u>	<u>39492-88-1</u>	<u>C4HF7O4</u>
<u>PEPA</u>	<u>2,3,3,3-Tetrafluoro- 2-</u>	<u>267239- 61-2</u>	<u>C5HF9O3</u>

1		<u>(pentafluoroethoxy) propanoic acid</u>		
2	<u>PFMOBA</u>	<u>Perfluoro-4- methoxybutanoic acid</u>	<u>8630 90- 89-5</u>	<u>C5HF9O3</u>
3	<u>PFO3OA</u>	<u>Perfluoro(3,5,7-trioxaoctanoic) acid</u>	<u>39492-89-2</u>	<u>C5HF9O5</u>
4	<u>PFO4DA</u>	<u>Perfluoro(3,5,7,9-tetraoxadecanoic)</u>	<u>39492-90-5</u>	<u>C6HF11O6</u>
5		<u>acid</u>		
6	<u>PFESA-BP1/</u>	<u>Nafion Byproduct 1</u>	<u>66796-30-3;</u>	<u>C7HF13O5S</u>
7	<u>Nafion BP #1</u>		<u>29311-67-9</u>	
8	<u>PFESA-BP2/</u>	<u>Nafion Byproduct 2</u>	<u>749836-20-2</u>	<u>C7H2F14O5S</u>
9	<u>Nafion BP #2</u>			
10	<u>PFECA-G</u>	<u>Hexanoic acid, 2,2,3,3,4,4,5,5,6,6-</u>	<u>174767-10-3;</u>	<u>C7HF13O3</u>
11		<u>decafluoro-6- (trifluoromethoxy)-;</u>	<u>801212-59-9</u>	
12		<u>Butanoic acid, 2,2,3,3,4,4- hexafluoro-4-</u>		
13		<u>[1,2,2,2- tetrafluoro-1- (trifluoromethyl)</u>		
14		<u>ethoxy]-</u>		
15	<u>TAFN4/</u>	<u>Perfluoro(3,5,7,9,11-</u>	<u>39492-91-6</u>	<u>C7HF13O7</u>
16	<u>PF05DA</u>	<u>pentadodecanoic) acid</u>		
17				
18	<u>PFHpA</u>	<u>Perfluoroheptanoic acid</u>	<u>375-85-9</u>	<u>C7HF13O2</u>
19				
20	<u>HFPO-DA/</u>	<u>2,3,3,3-Tetrafluoro-2 (1,1,2,2,3,3,3-</u>	<u>13252-13-6</u>	<u>C6HF11O3</u>
21	<u>PFPrOPrA/</u>	<u>heptafluoropropoxy)-propanoic acid)</u>		
22	<u>"GenX".</u>			

(4) "Public water system" has the same meaning as provided in G.S. 130A-313(10), except that for purposes of this section, the term shall also include any water collection, treatment, or storage facility that is part of a publicly owned treatment works (POTW) that administers a POTW pretreatment program, as defined in 40 Code of Federal Regulations § 403.3, whether or not the POTW provides water to the public for human consumption through pipes or other constructed conveyances."

SECTION 2. This act is effective when it becomes law.